cision in the lower court so that fees should be limited to services in procuring a dissolution in that court. *Ellwood* v. *Rankin,* 70 Ia. 403, 30 N. W. 677; *Neiser* v. *Thomas,* 46 Mo. App. 47; *Town of Gifford* v. *Cornell,* 4 Abb. Pr. 220. Where the injunction is the main relief sought, counsel fees for services rendered upon appeal are not recoverable. *Barre Water Co.* v. *Carnes,* supra. As to the amount of the fees, there is no fixed rule. They must be reasonable and fair (*Chicago Door Co.* v. *Parks,* 79 Ill. App. 188) and limited to that part of the defense that is rendered necessary on account of the issuance of the injunction, excluding any fees caused by the defense of the main suit either before or after the dissolution of the injunction. *Curry* v. *Am. Mortg. Co.,* 124 Ala. 614, 27 South. 454; *Robertson* v. *Smith,* 129 Ind. 422, 28 N. E. 857.

INJUNCTION—GROUNDS—RESTRAINT OF THE ENACTMENT OF AN ORDINANCE. —By the charter of the City of Minneapolis the City Council was authorized to regulate and designate where certain kinds of business and amusements might be located and carried on. The City Council passed an ordinance by which the establishment of certain of such enterprises was prohibited absolutely within the territory described therein. Thereupon, before said ordinance was approved by the mayor and published, the plaintiffs, who were the owners of a large part of the land specified in the ordinance as prohibited territory, brought an action against the city, its mayor, and clerk to enjoin and restrain them from "executing or attempting to put into operation said ordinance and from signing or approving, publishing or causing the same to be published." *Held,* Action cannot be maintained. *Basting* v. *City of Minneapolis* (1910), — Minn. —, 127 N. W. 1131.

The decisions are uniform to the effect that courts will enjoin the enforcement of unconstitutional statutes and ordinances subsequent to their enactment. *Cicero Lumber Co.* v. *Cicero,* 176 Ill. 9, 51 N. E. 758, 68 Am. St. Rep. 155, 42 L. R. A. 696. The courts also seem to agree that a municipal corporation in the exercise of legislative power in relation to subjects committed to its jurisdiction can no more be enjoined than can the legislature of a state, except when the mere passage of the ordinance would immediately occasion or would be followed by some irreparable loss or would cause a multiplicity of suits. *Des Moines Gas Co.* v. *Des Moines,* 44 Iowa 505, 24 Am. Rep. 756; *Montgomery Gas Light Co.* v. *Montgomery,* 87 Ala. 245, 4 L. R. A. 616; *Spring Valley Water Works* v. *Bartlett,* 16 Fed. 615, 8 Sawy. 555. A conflict of authority arises, not in the enunciation of the last named rule and of the exceptions thereto, but in the interpretation which is to be placed thereon. (1) As to what constitutes a legislative act. *People* v. *Sturtevant,* 9 N. Y. 263, 59 Am. Dec. 536, holding that the passing of a resolution granting a street railway the right to use the streets, by laying tracks and running cars, is not an act of municipal legislation and therefore an injunction to restrain the enactment would lie. Contra, *Des Moines Gas Co.* v. *Des Moines,* 44 Iowa 505, 24 Am. Rep. 756, holding that a grant to a gas company of the right to use the streets by laying pipes therein was a legislative act and therefore injunction would not lie. The latter would seem to be the

better rule and probably expresses the weight of authority. *Montgomery Gas Light Co.* v. *Montgomery,* 87 Ala. 245, 4 L. R. A. 616. (2) As to what constitutes irreparable injury: *Dels. Imp. Co. et al.* v. *City of Eau Claire,* 115 Wis. 155, holding that injunction lies to restain defendant from passing an ordinance declaring null and void a contract regarding the construction and operation of a dam, water works and the use of water rights incident thereto, on the ground that irreparable injury would result therefrom, in that it would create a cloud on the title. Contra, *Montgomery Gas Light Co.* v. *Montgomery,* 87 Ala. 245, 4 L. R. A. 616, holding that injunction does not lie to restrain council from passing ordinances annulling contract with gas company, because a void law is no law, and the same is true of an ordinance, consequently no injury can result therefrom. *Spring Valley Water Works* v. *Bartlett,* 16 Fed. 615, 8 Sawy. 555; *Des Moines Gas Co.* v. *Des Moines,* 44 Iowa 505, 24 Am. Rep. 756.

INSURANCE—ACCIDENT INSURANCE—PROXIMATE CAUSE OF DEATH.—Plaintiff who held an accident policy in defendant company which provided for liability on the part of the company in case of death from bodily injury from external, violent and accidental means, resulting, independent of all other causes, in death, fell from his carriage and was immediately seized with a fatal attack of "auto-intoxication." In an action on the policy, *held,* that it was not shown that death was caused by the fall. *Aetna Life Insurance Co.* v. *Bethel* (1910), — Ky. —, 131 S. W. 523.

This case raises the doctrine of proximate cause and presents the usual difficulty of practically applying the simple rule that the company is liable when the accident is the proximate cause of the result. In accident insurance, however, proximate cause has a somewhat unusual relation to liability, as liability is fixed by the contract of insurance, and the question to be determined is, "does this contract cover this condition of affairs?" *Travelers Insurance Co.* v. *Melick,* 65 Fed. 178, 184, 27 L. R. A. 629. "Proximate cause" in accident insurance has been held to mean that cause which directly produces the effect,—the cause which sets in motion a train of events which brings about the result without the intervention of any force operating *and working actively from a new and independent source; but this does not necessarily mean the cause or condition nearest in time or place to the result.* 1 CYC. 273. In *Freeman* v. *Mercantile Mut. Ass'n.,* 156 Mass. 351, 30 N. E. 1013, 17 L. R. A. 753, a fall, which brought on a renewed attack of peritonitis causing death, was held to be the proximate cause. So also in *Fetter et al.* v. *Fidelity & Casualty Co.,* 174 Mo. 256, 73 S. W. 592, 61 L. R. A. 459, in which case a fall ruptured an already cancerous kidney. An injury may be the cause of death within the intent of the policy fully as much if death results because of a peculiar condition or particular weakness of the deceased, even though in an ordinary man no such result would have happened. The weak man is to be protected as well as the strong. *Freeman* v. *Association,* supra. The difference between accident and disease is difficult to determine, as is pointed out by VANCE, INSURANCE, p. 566 (and note) where he says that typhoid fever, contracted from germs in drinking water causing